

**Application No.:** 10/646,852  
**Filing Date:** August 22, 2003

### REMARKS

Prior to this Amendment, Claims 2-13, 16-22, 27, and 33-38 were pending. Claim 38 is amended herein to incorporate the features of Claim 9 and the dependency of Claim 10 is adjusted in view of the cancelation of Claim 9, leaving Claims 2-8, 10-13, 16-22, 27, and 33-38 pending. Support for the amendments can be found in the claims as originally filed. No new matter is added. Applicants thank the Examiner for the opportunity to discuss the amendments in a telephonic interview on August 20, 2008.

#### Claim Rejections Under 35 U.S.C. § 112

The Examiner rejected Claims 38, 2-13, 16-22, and 27 under 35 U.S.C. § 112, first paragraph, finding that “the specification, while being enabling for milk proteins, does not reasonably provide enablement for all proteins.” The Examiner also stated that “Applicant does not contemplate other types of proteins, such as non-dairy proteins.” Applicant respectfully disagrees. Applicant discloses that “the protein portions from soy beans, legumes, eggs, grains, such as oats, leaf sources, meats, fish or single celled microorganisms, such as algae, may be used as proteins sources to produce concentrated or dehydrated protein products,” and believes that Claim 38 is enabled. Specification as published, Paragraph [0029].

Nevertheless, without acquiescing in the rejection, Applicants amend Claim 38 to recite that the concentrated protein comprises milk protein. As discussed in the interview, Applicants believe that the requirements of 35 U.S.C. § 112, first paragraph are clearly met and respectfully request withdrawal of the rejection.

As Claims 33-37 were previously allowed, Applicants submit that the present application is in condition for allowance.

#### No Disclaimers or Disavowals

Although the present communication includes alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or

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other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application is in condition for allowance. If there is any further hindrance to allowance of the pending claims, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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